

Kyle
Signature of Sponsor

AMEND Senate Bill No. 2149

House Bill No. 2050*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-4-1001, is amended by inserting the following language as new, appropriately designated subdivisions:

() "Consumer" means an individual who is not a cigarette retail dealer or a licensed cigarette distributor. Such term shall also include any person, including a cigarette retailer or licensed distributor, who purchased cigarettes for personal consumption;

() "Delivery sale" means any sale of cigarettes to a consumer in this state where either:

(A) The purchaser submits the order for such sale by means of a telephonic or other method of voice transaction, the mails, or any other delivery service, or the Internet or other online service; or

(B) The cigarettes are delivered by use of the mails or other delivery service.

A sale of cigarettes shall constitute a delivery sale regardless of whether the seller is located within or without of the state.

() "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers and who is not a seller, dealer or distributor.

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following language as a new, appropriately designated section:

(a)

(1) Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall provide a prominent and clearly legible statement via website or other literature to each prospective consumer that:

(A) Cigarette sales to consumers below the legal minimum purchase age are illegal;

(B) Sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subdivision (b)(2); and

(C) Cigarette sales are subject to tax under § 67-4-1004; such statement shall include an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(b) Each seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall:

(1) Include a clear and conspicuous statement upon the shipping container, as follows:

“Cigarettes: Tennessee Law Prohibits Shipping to Individuals Under Age Eighteen, and requires the payment of all Applicable Taxes”;

(2) Use a method of mailing, shipping, or delivery that obligates the delivery service to:

(A) Require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign in order to accept delivery of the shipping container, and

(B) Restrict delivery to an adult of legal minimum purchase age or, in the absence of a signed acceptance of delivery by an adult of legal minimum purchase age, to return the shipping container and its contents to the seller.

(c)

(1) Not later than the tenth day of each calendar month, a seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale during the previous calendar

month shall file with the department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(A) The name and address of the consumer to who such delivery sale was made;

(B) The brand or brands of the cigarettes that were sold in such delivery sale; and

(C) The quantity of cigarettes that were sold in such delivery sale.

(2) Any person who satisfies the requirements of 15 U.S.C.A. § 376 shall be deemed to satisfy the requirements of this subsection.

(d)

(1) If a seller, dealer or distributor of cigarettes who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale, commits a first violation of the provisions of this section, then the seller, dealer or distributor shall be subject to a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater. If the seller, dealer or distributor commits a second or subsequent violation of the provisions of this section, then the seller, dealer, or distributor shall be subject to a fine of five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater.

(2)

(A) Any cigarettes sold or attempted to be sold in a delivery sale that do not meet the requirements of this section shall be forfeited to the state and destroyed.

(B) All fixtures, equipment, and all other materials and personal property on the premise of any seller, dealer or distributor of cigarettes who, with the intent to defraud the state,

violates any of the requirements of this section shall be forfeited to the state.

(e) The attorney general or his designee, or any person who holds a valid permit under 26 U.S.C.A. § 5712, may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person, or any person controlling such person.

SECTION 3. Each person accepting a purchase order for a delivery sale shall collect and remit to the department all cigarette taxes imposed by the state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the state.

SECTION 4. Nothing within the provisions of this act shall be construed to directly or indirectly modify or amend any aspect of any provision of the Tennessee Tobacco Manufacturers' Escrow Fund Act of 1999, as amended, §§ 47-31-101 through 47-31-103, or the related statute codified at §§ 67-4-2601, et seq.

SECTION 5. This act shall take effect July 1, 2005, the public welfare requiring it.